

MARVIN MARSHALL	§	
v.	§	CIVIL ACTION NO. 9:11v38
DIRECTOR, TDCJ-CID	§	

The Petitioner Marvin Marshall, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of disciplinary action taken against him during his confinement in TDCJ. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Marshall challenges two disciplinary cases, numbered 2011007251, for threatening to inflict harm on an officer, and no. 20110136388, for threatening to escape. In case no. 7251, Marshall complained that he received ineffective assistance from his counsel substitute and that the evidence was insufficient to support the finding of guilt. As punishment for this case, Marshall received 45 days of cell and commissary restrictions and a reduction in classification status, but did not lose any good time. He filed Step One and Step Two grievances appealing this case, but these were denied.

In case no. 6388, Marshall complained that the evidence was insufficient to support a finding of guilt and that he was punished in violation of the Double Jeopardy Clause. As punishment for this case, Marshall received 15 days of cell and commissary restriction, reduction in classification status, and the loss of 300 days of good time credits. He filed a Step One grievance to appeal the case, but when this was denied, he did not file a Step Two appeal.

The Magistrate Judge ordered the Respondent to answer the petition. In his answer, the Respondent contended that Marshall's claims concerning case no. 7251 lacked merit because Marshall did not show that he was deprived of any constitutionally protected liberty interests, and that his claims concerning case no. 6388 are unexhausted and procedurally barred because Marshall did not exhaust his available administrative remedies. Marshall did not file a response to the answer.

After review of the pleadings, the Magistrate Judge issued a Report on August 5, 2011, recommending that the petition be dismissed. The Magistrate Judge concluded that, pursuant to Sandin v. Conner, 115 S.Ct. 2293, 2301 (1995), Marshall did not show that he was deprived of a constitutionally protected liberty interest as a result of the punishments imposed in cause no. 7251. The Magistrate Judge also concluded that Marshall had failed to exhaust his administrative remedies in cause no. 6388 by failing to file a Step Two appeal, and so his claims regarding that case were procedurally defaulted. Sones v. Hargett, 61 F.3d 410, 416 (5th Cir. 1995). The Magistrate Judge thus recommended that the petition be dismissed and that Marshall be denied a certificate of appealability *sua sponte*.

Marshall filed objections to the Magistrate Judge's Report on August 29, 2011. These objections, which appear to be written in multiple handwritings, discuss various issues surrounding the facts of the disciplinary cases, but do not mention the Magistrate Judge's conclusions that Marshall failed to show a deprivation of a constitutionally protected liberty interest in cause no. 7251, nor that he procedurally defaulted his claims in cause no. 6388 by failing to file a Step Two appeal. Marshall's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in the cause, including the original petition, the answer of the Respondent, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 8) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Marvin Marshall is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So **ORDERED** and **SIGNED** this **19** day of **September, 2011**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge